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Enclosure 6c
October 2, 2018

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October 2, 2018

TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation on the matter of
Kingston Hill Academy v. North Kingstown School Committee

The Appeals Committee of the Council on Elementary and Secondary Education met on September 18, 2018, to hear oral argument on the appeal of the following Commissioner decision:

Kingston Hill Academy v. North Kingstown School Committee

RECOMMENDATION: THAT, in the matter of Kingston Hill Academy v. North Kingstown School Committee, the Commissioner's decision is affirmed, as presented.

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STATE OF RHODE ISLAND

**COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION**

KINGSTON HILL ACADEMY,

v.

NORTH KINGSTOWN
SCHOOL DEPARTMENT

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DECISION

North Kingstown School Department (“NKSD”) has appealed from a December 12, 2017 decision (the “Decision”) of the Commissioner of Education (the “Commissioner”), wherein the Commissioner ruled in favor of Kingston Hill Academy (“KHA”) on its request to withhold state aid from North Kingstown School Department (“NKSD”) for failure to pay KHA invoices. The Commissioner further ordered KHA to provide certain information related to NKSD resident enrollees appearing on KHA invoices to verify accuracy. For the reasons stated herein, we affirm the Commissioner’s decision.

This matter was initiated On September 30, 2016 when KHA filed a request with the Commissioner to withhold state aid from NKSD for payment of its per-pupil tuition invoices. On October 6, 2016, NKSD requested a hearing. NKSD made payments for a number of students and requested verifying information regarding the remaining students. Subsequent discussions between the parties failed to resolve the issue. On January 12, 2017, a show cause hearing was conducted to demonstrate why NKSD should not make the remaining payments. At the hearing NKSD argued that its actions are merely intended to avoid billings errors by ensuring that invoiced

students are properly enrolled at KHA prior to making the payments. In the Decision, the Commissioner ordered withholding of the school aid and noted that NKSD could continue to make timely payments and that “the ability to make billing adjustments based on enrollment clarification always exists.” *December 12, 2017 Decision of the Commissioner at page 3*. The Commissioner further ordered that “[u]pon request, Kingston Hill shall provide North Kingstown with the previously-discussed information from the applications, lottery results and acceptance letters of North Kingstown residents enrolled at Kingston Hill.” *Id.*

On appeal NKSD argues that the withholding of state aid is inappropriate because NKSD should be allowed to refrain from making the per-pupil payments until after it receives the verifying information. Additionally, NKSD asserts that there is no mechanism to enforce the Commissioner’s ruling that NKSD is entitled to the verifying information.

In reply, KHA argues that the Commissioner correctly applied the statute, *R.I.G.L. 16-7.2-5(a)*, which requires the per-pupil tuition be paid quarterly and explicitly allows for state aid withholding in the event a payment is not made. Further, KHA argues that NKSD is improperly attempting to oversee KHA’s enrollment procedures by refusing to make payments without access to enrollment information. Lastly, KHA points to the language of the Decision stating that NKSD may enforce the order to respond to requests for information at the Commissioner’s level.

The Council reviewed the briefs and considered the well-presented arguments of both parties at oral argument. We find that the Decision correctly applied the relevant statute and Commissioner’s guidance memorandum in determining that “North Kingstown must make full payment of Kingston Hill invoices on a timely basis.” *December 12, 2017 Decision of the Commissioner at page 4*. The pertinent statute clearly states that these payments “shall be made on a quarterly basis.” *RIGL §16-7.2-5(b)*. Further, the statute grants the Commissioner the

authority to withhold state aid in the event a community fails to pay. *Id.* (“*Failure of the community to make the local district payment . . . may result in the withholding of state education aid . . .*”).

Lastly, as the Decision orders KHA to provide certain information for enrollment verification purposes, we agree that “the matter can ultimately be resolved [at the Commissioner’s level].” *December 12, 2017 Decision of the Commissioner at page 4.*

In light of all the above and the reasoning set forth in the Commissioner’s decision, we concur with and affirm the Commissioner’s decision in its entirety. We find that the Commissioner correctly interpreted and applied the statutes at issue, and that the decision is in no way “patently arbitrary, discriminatory, or unfair,” which is the standard of review for appeals to the Council. *Altman v. School Committee of the Town of Scituate*, 115 R.I. 399, 405 (1975).

For the reasons stated herein, the Decision of the Commissioner is affirmed.

The above is the decision that the Appeals Committee recommends after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on September 18, 2018.

Council on Elementary and Secondary Education,

Daniel P. McConaghy, Chair

September, 2018

Amy Beretta, Esq., Appeals Committee Chair

September, 2018